

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRY DAVIS,

Defendant-Appellant.

UNPUBLISHED

August 21, 2007

No. 269096

Wayne Circuit Court

LC No. 05-008670-01

Before: Owens, P.J., and White and Murray, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree premeditated murder, MCL 750.316(1)(a), and possession of a firearm during the commission of a felony, MCL 750.227b. She was sentenced to life imprisonment without the possibility of parole for the first-degree murder conviction and a consecutive two-year term of imprisonment for the felony-firearm conviction. She appeals as of right. We affirm.

Defendant's convictions arise from the shooting death of Alie Brock. There is no dispute that a physical fight between Brock and defendant's husband, Robert Davis, preceded the shooting and that Brock was larger than Davis. The prosecution's theory was that defendant shot Brock after the fight between the men was over. Defendant asserted that she shot Brock during the fight in order to save her husband.

Defendant first argues that there was insufficient evidence of premeditation to support her first-degree murder conviction. We disagree. In reviewing the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005).

First-degree premeditated murder requires that the defendant killed the victim and that the killing was "willful, deliberate, and premeditated." MCL 750.316(1)(a). "Premeditation, which requires sufficient time to permit the defendant to take a second look, may be inferred from the circumstances surrounding the killing." *People v Coy*, 243 Mich App 283, 315; 620 NW2d 888 (2000). "Premeditation and deliberation may be established by evidence of '(1) the prior relationship of the parties; (2) the defendant's actions before the killing; (3) the circumstances of the killing itself; and (4) the defendant's conduct after the homicide.'" *People*

v Abraham, 234 Mich App 640, 656; 599 NW2d 736 (1999), quoting *People v Schollaert*, 194 Mich App 158, 170; 486 NW2d 312 (1992).

Viewed in the light most favorable to the prosecution, the evidence showed that there was bad blood between the neighbors. When the fight broke out between Robert Davis and Brock, defendant yelled, “Kill that nigger. Just kill that nigger.” Defendant then went inside her house and searched for a gun, finding it in the second place she looked. Once outside, she chased Brock before shooting him. Brock was standing when defendant shot him in the back. The wound to Brock’s shoulder was consistent with his back being turned to defendant. Additionally, two witnesses testified that they saw defendant and Brock at the time of the shooting, but not Davis, and the pools of Davis’s and Brock’s blood were located in different areas, with neither containing the blood of the other, indicating that Brock was not on top of Davis hitting him at the time he was shot in the back as defendant and Davis both claimed.

Also, the evidence supported an inference that the bullet to Brock’s cheek, which exited his jaw and reentered his chest where it perforated his heart, liver, and colon, was fired second based on the severity of the damage caused by the shot, that it was fired from less than two feet, and that the wound was consistent with Brock being bent over or lying on the ground. This meant that defendant closed the distance gap between herself and Brock and shot at least a semi-incapacitated Brock in a location that would surely result in severe injury or death. After the incident, defendant lied about her involvement and did not tell the police the whereabouts of the weapon used to shoot Brock. This evidence was sufficient to enable the jury to find that the killing was premeditated and deliberate.

Although testimony from other witnesses conflicted with the above-stated evidence, all conflicts in the evidence must be resolved in favor of the prosecution. *People v Fletcher*, 260 Mich App 531, 559; 679 NW2d 127 (2004). Additionally, this Court does not interfere with the jury’s role of determining the weight of evidence or the credibility of witnesses. *Id.* at 561. Accordingly, we find that there was sufficient evidence from which the jury could have found proof of premeditation beyond a reasonable doubt.

Defendant next argues that the prosecutor committed misconduct when she asserted in her closing argument, “Manslaughter is not even applicable in this case.” Because defendant did not challenge the prosecutor’s remark at trial, we review this issue for plain error affecting defendant’s substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). Considered in context, the prosecutor did not assert that the jury could not consider manslaughter. Rather, she was arguing that the evidence supported only a first-degree murder conviction, not a manslaughter conviction, which was permissible. See *People v Ackerman*, 257 Mich App 434, 453; 669 NW2d 818 (2003). Thus, there was no plain error.

Lastly, defendant argues that the trial court erred in failing to instruct the jury on defense of others and that defense counsel was ineffective for not objecting or requesting the jury instruction. However, the record discloses that defense counsel requested CJI2d 7.21, defense of others, and that the trial court instructed the jury on that defense. Therefore, defendant’s argument has no merit.

Affirmed.

/s/ Donald S. Owens

/s/ Helene N. White

/s/ Christopher M. Murray